



[Docket No. FR-6275-N-01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts: Revision of Effective Date for 2019 and 2020 Designations

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document revises the effective date for designations of “Difficult Development Areas” (DDAs) and “Qualified Census Tracts” (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42) published on October 22, 2018, (83 FR 53282) and September 25, 2019, (84 FR 50465) in response to the Presidentially-declared COVID-19 emergency. This notice extends from 730 days to 910 days the period for which the 2019 and 2020 lists of QCTs and DDAs are effective for projects (1) located in an area not on subsequent lists of DDAs or QCTs; and (2) that submitted applications while the area was a 2019 or 2020 QCT or DDA.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8234, Washington, DC 20410-6000; telephone number (202) 402-5878, or send an email to Michael.K.Hollar@hud.gov. For specific legal questions, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224; telephone number (202) 317-4137, fax number (855) 591-7867. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245-2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice and additional information about DDAs and QCTs are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2020, the President issued major disaster declarations under the authority of the Stafford Act with respect to all 50 States, the District of Columbia, and 5 territories (American Samoa, Guam, Puerto Rico, Northern Mariana Islands, and the U.S. Virgin Islands) to assist with additional needs identified under the nationwide emergency declaration for COVID-19. In the context of a Presidentially-declared Major Disaster, IRS Revenue Procedure 2014-49, 2014-37 I.R.B. 535, provides temporary relief to housing finance agencies (HFAs) and owners from certain requirements of IRC Section 42. Among the relief provided, if an owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, an HFA may grant an extension to the placed-in-service requirement. Rev. Proc. 2014-49, Section 6.03. This extension applies only to properties receiving IRC Section 42 allocated credits and does not apply or provide relief to properties receiving credits associated with IRC Section 142 tax-exempt bond revenue. HUD is revising the effective date of the 2019 and 2020 QCTs and DDAs at this time to aid the ability of areas affected by COVID-19 to place in service affordable housing under both Section 42 and Section 142.

I. This Notice

This notice extends from 730 days to 910 days the period for which the 2019 and 2020 lists of QCTs and DDAs are effective for projects that are not located in areas on subsequent lists of DDAs or QCTs but submitted applications while the area was a 2019 or 2020 QCT or DDA. HUD published lists of DDAs and QCTs for 2019 on October 22, 2018 (83 FR 53282); for 2020 on September 25, 2019 (84 FR 50465); and for 2021 on September 24, 2020 (85 FR 60255).

The actual designations of 2019 and 2020 QCTs and DDAs are not affected by this notice. HUD is revising the effective date of the 2019 and 2020 QCTs and DDAs at this time to aid the ability of areas affected by COVID-19 to place in service affordable housing.

II. Extension of 2019 DDA and QCT Designations

For LIHTC and bond-financed projects, the sections entitled “Effective Date” and “Interpretive Examples of Effective Date” of the 2019 DDA and QCT designations as published October 22, 2018 (83 FR 53282) are hereby revised to read as follows:

Effective Date

The 2019 lists of QCTs and DDAs are effective:

- (1) for allocations of credit after December 31, 2018; or
- (2) for purposes of IRC section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2018.

If an area is not on a subsequent list of DDAs, the 2019 lists are effective for the area if:

- (1) the allocation of credit to an applicant is made no later than the end of the 910-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

- (2) for purposes of IRC section 42(h)(4), if:

- (a) the bonds are issued or the building is placed in service no later than the end of the 910-day period after the applicant submits a complete application to the bond-issuing agency, and

- (b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A “complete application” means that no more than de minimis clarification of the application is required for

the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a “multiphase project,” the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a “multiphase project” is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over two or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary’s designee, has legal authority to designate DDAs and QCTs, in accordance with 26 U.S.C. 42(d)(5), by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas

of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including Federal Register notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2019 DDA that is NOT a designated DDA in 2020, 2021, or 2022. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2019. Credits are allocated to Project A on January 30, 2022. Project A is eligible for the increase in basis accorded a project in a 2019 DDA because the application was filed BEFORE January 1, 2020 (the effective date for the 2020 DDA lists), and because tax credits were allocated no later than the end of the 910-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2019 DDA that is NOT a designated DDA in 2020, 2021, or 2022. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2019. Credits are allocated to Project B on June 30, 2022. Project B is NOT eligible for the increase in basis accorded a project in a 2019 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2020 (the effective date of the 2020 DDA lists), the tax credits were allocated later than the end of the 910-day period after the filing of the complete application.

(Case C) Project C is located in a 2019 DDA that was not a DDA in 2018. Project C was placed in service on November 15, 2018. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2019. The bonds that will support the permanent financing of Project C are issued on September 30, 2019. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2019 DDA, because the project was placed in service BEFORE January 1, 2019.

(Case D) Project D is located in an area that is a DDA in 2019, but is NOT a DDA in 2020, 2021, or 2022. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2019. Bonds are issued for Project D on January 30, 2022, but Project D is not placed in service until July 30, 2022. Project D is eligible for the increase in basis available to projects located in 2019 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on January 30, 2022, within the 910-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

Extension of 2020 DDA and QCT Designations

For LIHTC and bond-financed projects, the sections entitled “Effective Date” and “Interpretive Examples of Effective Date” of the 2020 DDA and QCT designations as published September 25, 2019 (84 FR 50465) are hereby revised to read as follows:

Effective Date

The 2020 lists of QCTs and DDAs are effective:

- (1) for allocations of credit after December 31, 2019; or
- (2) for purposes of IRC section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2019.

If an area is not on a subsequent list of DDAs, the 2020 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 910-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 910-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A “complete application” means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a “multiphase project,” the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a “multiphase project” is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each

phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over two or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, in accordance with 26 U.S.C. 42(d)(5), by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including Federal Register notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2020 DDA that is NOT a designated DDA in 2021, 2022, or 2023. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2020. Credits are allocated to Project A on January 30, 2023. Project A is eligible for the increase in basis accorded a project in a 2020 DDA because the application was filed BEFORE January 1, 2021 (the effective date for the 2021 DDA lists), and because tax credits were allocated no later than the end of the 910-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2020 DDA that is NOT a designated DDA in 2021, 2022, or 2023. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2020. Credits are allocated to Project B on June 30, 2023. Project B is NOT eligible for the increase in basis accorded a project in a 2020 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2021 (the effective date of the 2021 DDA lists), the tax credits were allocated later than the end of the 910-day period after the filing of the complete application.

(Case C) Project C is located in a 2020 DDA that was not a DDA in 2019. Project C was placed in service on November 15, 2019. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2020. The bonds that will support the permanent financing of Project C are issued on September 30, 2020. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2020 DDA, because the project was placed in service BEFORE January 1, 2020.

(Case D) Project D is located in an area that is a DDA in 2020, but is NOT a DDA in 2021, 2022, or 2023. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2020. Bonds are issued for Project D on January 30, 2023, but Project D is not placed in service until July 30, 2023. Project D is eligible for the increase in basis available to projects located in 2020 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B)

of the IRC (the two events being bonds issued and buildings placed in service) took place on January 30, 2023, within the 910-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

Findings and Certifications

A. Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

B. Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. As a result, this notice is not subject to review under the order.

Kurt G. Usowski,
Deputy Assistant Secretary for Economic Affairs.

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